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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/679,746

10/06/2003

Fatima Emitsel Yakubu-Madus

X-11921A

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25885

7590

06/20/2006

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EXAMINER

CHANDRA, GYAN

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of species pioglitazone in the reply filed on 4/3/2006 is acknowledged. The traversal is on the ground(s) that both pioglitazone and rosiglitazone are shown to unexpectedly enhance glycemic control while avoiding heart hypertrophy. Applicants' arguments are persuasive and therefore, the species pioglitazone along with rosiglitazone are being examined.

The requirement is still deemed proper and is therefore made FINAL.

Status of Application, Amendments, And/Or Claims

Claims 23-47 are pending and are under examination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 23-47 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,660,716.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is a method of treating hyperglycemia comprising co-administering a GLP-1 agonist and an effective dosage of either pioglitazone or rosiglitazone to a patient, wherein the co-administration of said compounds also reduces HbA1c levels in diabetic patients, whereas claims 1-34 of the U.S. Patent No. 6,660,716 are drawn to a method of treating diabetes. The instant invention does not require that the co-administration comprising a GLP-1 agonist and an effective dosage of either pioglitazone or rosiglitazone treat non-insulin dependent diabetes mellitus. Therefore, the scope of the instant invention is different than the U.S. Patent No. 6,660,716.

Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Manning et al. (U.S. Pat. No. 4,349,352). The teachings of Manning et al teach that the production of glycosylated hemoglobin (HbA1c) is a direct function of total free glucose

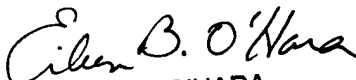
Art Unit: 1646

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gyan Chandra whose telephone number is (571) 272-2922. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 1646
6 June 2006
Fax: 571-273-2922


EILEEN B. O'HARA
PRIMARY EXAMINER